

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

February 5, 2004

Opinion No. 04-015

Compensation of Members of County Legislative Body During Term of Office

QUESTIONS

1. May the members of a county legislative body increase or decrease their compensation during their term of office?
2. May a member of a county legislative body accept less pay than the amount of compensation approved by the county legislative body?

OPINIONS

1. Members of a county commission may raise or lower their compensation during their term of office, as long as they do not go below the statutory minimum and are not covered by the population restrictions of § 5-5-107(b)(2).
2. No, a member of a county legislative body may not accept less than the amount of compensation approved by the county legislative body.

ANALYSIS

1. Your question asks whether members of county legislative bodies may increase or decrease the compensation of its members during its present term. Unless there is a constitutional or statutory prohibition, the compensation of public officers may be raised or lowered during a term of office. *Blackwell v. Quarterly County Court of Shelby County*, 622 S.W.2d 535, 540 (Tenn. 1981) (salaries of public employees may be raised or lowered absent constitutional prohibition). As this office noted in 1988, the compensation of members of a county legislative body is governed solely by statute and there is no applicable constitutional provision on this issue. Op. Tenn. Atty. Gen. 88-54 (March 11, 1988).

By statute, the General Assembly has given county legislative bodies the power to fix the compensation of their membership, with minimum amounts set for most counties. Tenn. Code Ann. §§ 5-5-107(a), -107(b)(1)(2003 supp.) Different standards are set for counties “having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-six

thousand (286,000) according to the 1990 federal census or any subsequent census.” Tenn. Code Ann. § 5-5-107(b)(2)(2003 Supp.) In those counties, the legislature authorized the county legislative body in 1999 to set the salary of the body, following which “the compensation for members of the county legislative body *shall* be adjusted to reflect the same [annual] percentage increase the county mayor of such county is to receive.” *Id.* (emphasis added). It is a well known rule of statutory construction that the word “shall” when used in a statute imposes a mandatory obligation. *Stubbs v. State*, 216 Tenn. 567, 393 S.W.2d 150 (1965). Thus, the salaries of county commissioners in counties covered by § 5-5-107(b)(2) must be adjusted in accordance with the provisions of that section.

However, members of county legislative bodies not covered by that section may raise or lower salaries during a present term with one exception. Op. Tenn. Atty. Gen. 88-54 (March 11, 1988). The exception is set forth in Tenn. Code Ann. § 5-5-107(b)(1), which states that “the compensation fixed by the members of the county legislative body for attending sessions of the body *shall* in no case be less than” the applicable minimums listed in the statute. (emphasis added).

Thus, it is the opinion of this office that a county commission may raise or lower the compensation of its members during the present term, as long as they maintain the statutory minimum and are not covered by the population restrictions of § 5-5-107(b)(2).

2. Your second question asks whether a county commissioner may accept a lower salary than that authorized by the county legislative body. It is the opinion of this office that a county commissioner may not do so.

The general rule in Tennessee is that when the compensation of a public official is established by law, he or she cannot accept a lesser amount. *Carter v. Jett*, 370 S.W.2d 576 (Tenn. Ct. App. 1963). The state supreme court has specifically noted with regard to county officials that the waiver of a statutory salary by a public officer is void as against public policy and that the salary attaches to the office by law. *Carmichael v. Hamby*, 217 S.W.2d 934, 938 (Tenn. 1948) (agreeing to a lower salary than authorized may be seen as a form of bribery on the electorate).

Further, the statute authorizing the payment of salaries to members of the county legislative body appears to be mandatory:

(b)(1) [T]he compensation fixed by the county legislative body for attending sessions of the body *shall* in no case be less than the applicable amount reflected herein. . . .

. . . .

(c) The amount provided in this section, or a greater amount provided by resolution duly adopted by the county legislative body, *shall* be paid to the members for each day's attendance at meetings of the body or any duly authorized committee thereof, or a greater amount provided by resolution duly adopted by the county legislative body as a stated salary per month.

(d) The compensation fixed by the county legislative body for attending duly

authorized committee meetings of such body *shall* be one half (1/2) of the compensation paid for attending regular sessions of the body.

Tenn. Code Ann. §§ 5-5-107(b)(1), -107(c), -107(d) (emphases added).

In construing statutes, the legislative intent or purpose is to be ascertained from the natural and ordinary meaning of the language used when read in the context of the entire statute and without any forced or subtle construction to limit or extend the import of the language. *Natural Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). As noted above, the use of the word “shall” in a statute is generally considered mandatory and not discretionary. *Stubbs v. State*, 216 Tenn. 567, 393 S.W.2d 150 (1965); *Gable v. Lerma*, 812 S.W.2d 580, 582 (Tenn. 1990). Therefore, a member of a county legislative body may not accept an amount less than that set by the majority of the body.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

RUTH A. THOMPSON
Assistant Attorney General

Requested by:

Doug Overbey
State Representative
110 War Memorial Building
Nashville, TN 37243-0120